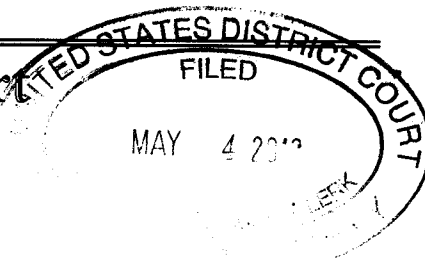


United States District Court  
for the  
Western District of New York



United States of America

v.

JOSHUA STEWART

*Defendant*Case No. 12mj565

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of April 24, 2010 in the county of Monroe in the Western District of New York, the defendant violated 18 U.S.C. § 2422(b), an offense described as follows:

Defendant knowingly used a means of interstate commerce to persuade, induce, entice, or coerce someone who had not yet attained the age of 18 years to engage in illegal sexual activity, in violation of United States Code, Section 2422(b).

This criminal complaint is based on these facts:

X Continued on the attached sheet.

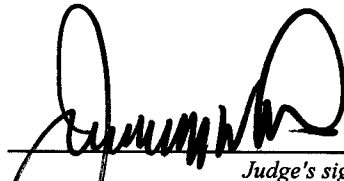
Please see attached affidavit

  
Complainant's signature

Adam J. Ouzer, Special Agent, Department of Homeland Security, Homeland Security Investigations  
Printed name and title

Sworn to before me and signed in my presence.

Date: 5/4/12

  
Judge's signature

City and State: Rochester, New York

Hon. Jonathan W. Feldman, U.S. Magistrate Judge  
Printed name and title

12MUG65

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

State of New York )  
County of Monroe ) ss:  
City of Rochester )

Adam J. Ouzer, being duly sworn, deposes and says:

1. I am a Special Agent with the Department of Homeland Security, Homeland Security Investigations (HSI). I have been employed as a Special Agent since June 2007. I am currently assigned to the HSI Special Agent in Charge in Buffalo, New York. As part of my daily duties as a Special Agent with HSI, I investigate crimes involving child exploitation and child pornography, including violations pertaining to the coercion and enticement of minors to engage in sexual activity in violation of Title 18, United States Code, Section 2422. I have received training in the area of child exploitation and child pornography.

2. I make this affidavit in support of a criminal complaint charging Joshua STEWART, (hereinafter "the defendant") with violating Title 18, United States Code, Section 2422(b), by knowingly using a means of interstate commerce

to persuade, induce, entice, or coerce someone who has not yet attained the age of 18 years to engage in illegal sexual activity.

3. The statements contained in this Affidavit are based upon information provided to me by HSI Agents, other law enforcement officers, and personnel specifically trained in the seizure and analysis of computers and electronic media, as well as upon my own investigation and experience and training as a Special Agent with HSI. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me about this matter. Instead, I have set forth only those facts that I believe are necessary to establish probable cause to believe that the defendant did knowingly violate Title 18, United States Code, Section 2422(b).

4. The New York State Police (NYSP) received a report that the defendant had engaged in sexual activities with a 13 year old minor female (hereinafter "minor victim"). NYSP Investigator Tracy Cass spoke with the minor victim on June 03, 2010, at the Bivona Child Advocacy Center in Rochester, New York. During this meeting the minor victim stated that her date of birth was June 13, 1996.

5. The minor victim disclosed to Investigator Cass that she met the defendant for the first time on or about April 24, 2010, or April 25, 2010, at the North Ponds Park in Webster, New York. The minor victim met the defendant through a mutual friend, also a minor (hereinafter "minor 2"), who had prior contact with the defendant. The defendant was 21 years old at this time and provided both minors with alcohol. The minor victim stated that she drank to the point of intoxication, and then slept at minor 2's house.

6. The minor victim provided the following information to Investigator Cass about a series of events that occurred on May 6, 2010:

a. The minor victim and minor 2 left a family trip to Sea Breeze amusement park in Rochester, New York, in order to meet the defendant outside the amusement park entrance. At this point the defendant provided marijuana to the two minors to smoke, and they then returned to the amusement park.

b. Later that evening, the defendant picked the minor victim up in his vehicle and took her to a parking lot behind an Abbotts Frozen Custard. The defendant asked the minor victim to perform oral sex on him, which she did. He began to touch her breasts. She asked him to stop, which he did.

7. Investigator Cass arrested the defendant on June 07, 2010. At the time of the arrest, the defendant possessed a mobile phone, which Investigator Cass seized. Investigator Cass obtained a search warrant for the defendant's phone. Pursuant to the search warrant, defendant's mobile phone was forensically analyzed by the NYSP Computer Crimes Unit, which located and secured text messages and other data.

8. Specifically, the forensic examination results indicate that, on May 23, 2010, text messages were exchanged between the defendant's phone and phone number (585) 402-3759, the phone number of minor 2. According to the minor victim and minor 2, the minor victim took possession of minor 2's phone and used it to communicate with defendant.

9. According to the mobile telephone report provided by NYSP, on May 23, 2010, at 8:04 pm, the defendant received a text message from phone number (585) 402-3759. The text message received was:

“yoo. Its [minor victim] ...get us alot of weeed tonight and uh....  
I'll have sex with you ;) mmfcl<3”

10. A portion of the exchange of messages between the defendant's phone and the minor victim while using minor 2's phone is reproduced below. The messages have been placed in order chronologically, and other interwoven "conversations" involving other individuals have been removed for clarity. The exchange is indicted to begin on May 23, 2010, at 8:16 pm, and end at 8:37 pm. The exchange begins with a response to the minor victim's earlier request for marijuana:

The defendant: ***"Tonight if you want. We would have to have sex. At that same time."***

Minor victim: ***"iggggghtt ;) are you sure you can bring it? Bring it asap ! mmfcl<3"***

The defendant: ***"Yeah i'm sure".***

Minor victim: ***"uh are we ferrrreall having sex ? mmfcl <3"***

The defendant" ***"Yeah"***  
followed by: ***"Have you had it before?"***

Minor victim: ***"igggggghttt ;) that's nice . mmfcl <3"***  
followed by: ***"Yea. Mmfcl <3"***

The defendant: ***"Ok"***

Minor victim: ***"so call my house when you can come alrite ;) mmfcl <3"***

The defendant ***"Ok. ;)"***

Minor victim: **“or [minor 2’s] cell . or mine ;) yeah call one of them when you can bring the weed . we can just text now ;) mmfcl <3”**

The defendant **“ok. ;) cool.”**

Minor victim: **“yepppppp . uh , yeah . mmfcl <3”**

The defendant: **“:) lol. Still high?”**

Minor victim: **“no”**

The defendant: **“What you up to?”**

Minor victim: **“nuthhhinn horney. Can i just like sext you to get the weeed? (; mmfcl<3”**

The defendant: **“No. It doesn’t work for me anymore unfortunately. I’m almost constantly horny. Real sex is the only thing that like does it for me. ;)”**

followed by: **“I promise i”ll get you more weed thursday though.**

followed by: **“Do you not want to go through with it?”**


11. The minor victim provided the following information to Investigator Cass about a series of events that occurred on May 25, 2010:

a. The defendant picked minor victim up in his vehicle and drove her to a parking lot behind an Abbotts Frozen Custard. Defendant asked minor victim to perform oral sex on him again, which she did. Defendant then started to touch minor victim and removed her pants. He digitally

penetrated her vagina, performed oral sex on her, and then had unprotected sexual intercourse with the minor victim.

b. At the conclusion of this encounter, defendant provided minor victim with a small bag of marijuana and a smoking pipe.

12. WHEREFORE, based on the foregoing, I respectfully submit that there is probable cause to believe that Joshua STEWART did knowingly violate Title 18, United States Code, Section 2422(b) , by knowingly using a means of interstate commerce to persuade, induce, entice, or coerce someone who has not yet attained the age of 18 years to engage in illegal sexual activity. In light of the ongoing nature of the investigation, your affiant respectfully requests that the criminal complaint remain sealed until Joshua STEWART'S arrest.

  
\_\_\_\_\_  
Adam J. Ouzer, Special Agent  
Homeland Security Investigations

Sworn to before me this  
4 day of May, 2012

  
\_\_\_\_\_  
HONORABLE JONATHAN W. FELDMAN  
UNITED STATES MAGISTRATE JUDGE